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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

March 22, 2007
10:15 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

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Motion to Approve Motion For Orders Under 11 U.S.C. Sections
363 And 365 And Fed. R. Bankr. P. 2002, 6004, 6006, And 9014
(A) Approving (I) Bidding Procedures, (II) Certain Bid
Protections, (III) Form And Manner Of Sale Notices, And (IV)
Sale Hearing Date And (B) Authorizing And Approving (I) Sale Of
Certain Of Debtors' Assets Comprising Assets Exclusively Used
In Debtors' Brake Hose Business Free And Clear Of Liens,
Claims, And Encumbrances, (II) Assumption And Assignment Of
Certain Executory Contracts And Unexpired Leases, And (III)
Assumption Of Certain Liabilities.

Motion for Omnibus Objection to Claim(s) Debtors' Eighth
Omnibus Objection (Procedural) Pursuant To 11 U.S.C. Section
502(b) And Fed. R. Bankr. P. 3007 To Certain (A) Duplicate And
Amended Claims, (B) Claims Duplicative Of Consolidated Trustee
Claim, (C) Equity Claims, And (D) Protective Claims.

Motion for Omnibus Objection to Claim(s) Debtors' Ninth Omnibus
Objection (Substantive) Pursuant To 11 U.S.C. Section 502(b)
And Fed. R. Bankr. P. 3007 To Certain (A) Insufficiently
Documented Claims, (B) Claims Not Reflected On Debtors' Books
And Records, (C) Untimely Claims, And (D) Claims Subject To
Modification.

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Motion to Approve Motion For Order Under 11 U.S.C. Sections
363(b), 365(a), And 365(d) And Fed. R. Bankr. P. 6004 And 6006
Authorizing Debtors To (A) Enter Into And Assign Purchase
Agreement, (B) Enter Into Lease Agreement, And (C) Reject
Certain Unexpired Leases Of Nonresidential Real Property.

Motion for Relief from Stay : Lead Plaintiffs' Motion for a
Limited Modification of the Automatic Stay

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And Fed. R. Bankr. P. 3007 To Certain (A) Insufficiently
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And Records, (C) Untimely Claims, And (D) Claims Subject To
Modification.

Motion to Authorize Motion For Order Under Sections 105 And 363
Authorizing The Debtors To Implement A Key Employee
Compensation Program

Motion for Omnibus Objection to Claim(s) Debtors' Ninth Omnibus
Objection (Substantive) Pursuant To 11 U.S.C. Section 502(b)
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Amended Claims, (B) Claims Duplicative Of Consolidated Trustee Claim, (C) Equity Claims, And (D) Protective Claims.

Motion for Omnibus Objection to Claim(s) Debtors' Ninth Omnibus Objection (Substantive) Pursuant To 11 U.S.C. Section 502(b) And Fed. R. Bankr. P. 3007 To Certain (A) Insufficiently Documented Claims, (B) Claims Not Reflected On Debtors' Books And Records, (C) Untimely Claims, And (D) Claims Subject To Modification.

Motion to Approve Motion for Orders Under 11 U.S.C. Sections 363 and 365 And Fed. R. Bankr. P.2002, 6004, 6006, And 9014 (A) Approving (I) Bidding Procedures, (II) Certain Bid Protections, (III) Form And Manner Of Sale Notices, And (IV) Sale Hearing Date and (B) Authorizing and Approving (I) Sale Of Certain Of Debtors' Assets Comprising Assets Exclusively Used In Debtors' Brake Hose Business Free And Clear Of Liens, Claims, And Encumbrances, (II) Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, And (III) Assumption Of Certain Liabilities

Motion to Approve Motion For Order Under 11 U.S.C. Sections 363(b), 365(a), And 365(d) And Fed. R. Bankr. P. 6004 And 6006 Authorizing Debtors To (A) Enter Into And Assign Purchase

Agreement, (B) Enter Into Lease Agreement, And (C) Reject
Certain Unexpired Leases of Nonresidential Real Property

Objection to Motion (Objection by IUE-CWA to Second
Supplemental KECP Motion (Docket #7200)).

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Transcribed By: Sharona Shapiro

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1 P R O C E E D I N G S

2 THE COURT: Are the people in Delphi ready? I know
3 you --

4 MR. BUTLER: We are, Your Honor.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, good morning, Jack Butler,
7 Kayalyn Marafioti and Al Hogan on behalf of Delphi Corporation
8 with other colleagues from Skadden, Arps, Slate, Meagher & Flom
9 here for the sixteenth omnibus hearing. Your Honor, we have
10 filed an omnibus hearing agenda and we'll, with rough justice,
11 at least try to take things in that order, if it's okay with
12 Your Honor.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, let me initially address --
15 let's why I sort of said rough justice -- let me initially
16 address matters 1, 5, and 6. These are the interim fee
17 applications of Thompson Hine LLP at docket number 3467.
18 Agenda item number 5 is the interim fee application of Houlihan
19 Lokey at docket number 5987. And item number 6 is the DLA
20 Piper interim fee application at docket number 6030. These
21 applications were not in a position, in terms of their filing
22 dates and other matters related, to be considered by the fee
23 committee when it went through its process to deal with all the
24 other first, second, and third fee applications. As a result,
25 the fee committee has requested, and these parties have agreed,

1 to adjourn this matter to the June 26th omnibus hearing.
2 That's when we're scheduled to hear the fourth fee applications
3 and it's the fee committee's intention then to roll these into
4 that process that they have -- that they intend to have in
5 place for that review.

6 THE COURT: Okay.

7 MR. BUTLER: Matters 2 and 3 on the agenda, matter 2
8 is the creditors committee GM claims and defenses motion at
9 docket number 4718. And matter number 3 is the companion ex
10 parte motion of the equity committee at docket number 5229.
11 The parties have agreed to adjourn these matters, again, as
12 rolling adjournment to the April 20th omnibus hearing.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, matter number 4 is the
15 Wachovia Bank's relief from stay. I think Mr. Berger is here
16 to report on that matter to the Court.

17 MR. BERGER: Good morning, Judge.

18 THE COURT: Good morning.

19 MR. BERGER: Neil Berger, Togut, Segal & Segal. Your
20 Honor may recall that Wachovia asserted a claim against the
21 debtors of in excess of 6.8 million dollars. When the
22 automatic stay brought to halt their state court action against
23 Delphi in the Mississippi State Court, they sought relief from
24 the automatic stay to assert that claim against one of our
25 employees.

1 We agreed with Wachovia to try to mediate this
2 matter. I attended the mediation in Jackson, Mississippi last
3 week. Retired bankruptcy Judge Frank Conrad is our mediator.
4 Our client was in attendance, as was Wachovia. We didn't reach
5 a settlement on Friday, but we are much closer than we were
6 before we started. This is a good mediation, Your Honor.
7 We're settling not only the 6.8 million dollar claim asserted
8 by Wachovia against the estate but we've also agreed to
9 settle -- tried to settle -- an 800,000 dollar claim asserted
10 by Lextron, which was Wachovia's borrower. Again, we are much
11 closer than we were before we started the mediation. Judge
12 Conrad has continued the mediation by way of e-mail and phone
13 and we were in contact with him last night. The parties have
14 agreed, subject to Your Honor's agreement, that we'd adjourn
15 the hearing to consider this stay motion until the next omnibus
16 hearing.

17 THE COURT: Okay. That's fine.

18 MR. BERGER: Thank you, Judge.

19 THE COURT: Thank you.

20 MR. BUTLER: Your Honor, the next matter on the
21 agenda is matter number 7. This is the ATEL Leasing
22 Corporation motion, docket number 6990. This is a motion in
23 which they're seeking allowance in payment of what they assert
24 are outstanding post-petition amounts in the administrative
25 expense claim to compel assumption or rejection of an unexpired

1 lease and for turnover of equipment. The allegations here are
2 being examined. We're trying to reconcile the accounts and
3 reach a consensual resolution in this matter. The debtors
4 believe we have in fact paid all the post-petition amounts that
5 are due and owing in connection with this. But in order to
6 complete the reconciliation and, frankly, to persuade ATEL to
7 take this matter off the calendar, we are continuing. And at
8 least for the moment, the parties have agreed to adjourn it to
9 the April 20th omnibus hearing.

10 THE COURT: Okay.

11 MR. BUTLER: We now turn, Your Honor, to the
12 uncontested, agreed or settled matters. The first matter is
13 the lease transaction motion subscribed at agenda item number
14 8, docket number 7111. There was an objection filed at docket
15 number 7207 by a landlord Milwaukee investment company to the
16 debtor's motion to reject the Shelby lease. The debtors filed
17 a response in connection with that. We attached a settlement
18 of that objection. Attached to our omnibus reply, which was
19 above docket number 7371, is a second lease amendment
20 agreement.

21 For the record, Your Honor, I would indicate to you
22 that the last sentence of paragraph 6 of that agreement has
23 been amended by the parties this morning in Court, even though
24 that was signed, such that that sentence will now say -- the
25 word any has been added prior to the word liability. So that

1 sentence will now read, "In the event of any such assignment,
2 tenant shall be released from any liability under the lease in
3 whole or in part." And that matter resolves the objection. I
4 think Mr. Toll is present in court today to confirm the
5 withdrawal of the objection based on the settlement.

6 MR. TOLL: Good morning, Your Honor, Sheldon Toll for
7 Milwaukee Investment Company. The objection is withdrawn in
8 the matter.

9 MR. BUTLER: Your Honor, discussing now -- just
10 presenting this a little more broadly in terms of this
11 transaction. This is a motion pursuant to which Delphi
12 Automotive Systems, LLC, will enter into a lease transaction to
13 essentially effect the consolidation of six leased facilities
14 and part of one owned facility, the property located in Auburn
15 Hills, Michigan. This motion originally requested the
16 authority to reject the two leases. But because of the
17 resolution of the loan objection filed, we're now seeking to
18 reject only one lease, as described in the motion.

19 The agreements that underlie this transaction include
20 a purchase agreement and an assignment agreement, a lease, a
21 sublease, and an escrow agreement. And those agreements are
22 all attached to the motion. In the absence of any objection
23 from any party, Your Honor, I'm not going to describe each of
24 those in detail. But I do want to point out to the Court that
25 this is not the everyday sort of singular lease motion. This

1 is actually part of the company's transformation plan strategy
2 to streamline their operations and capitalize on their market
3 strengths. And the company has gone through its real estate
4 facilities, an extensive review of its facilities, as it begins
5 to prepare for emergence from Chapter 11 and has concluded that
6 it would be strategically advantageous to consolidate multiple
7 offices and technical sites in Michigan and in Illinois into
8 one location in Michigan. So the principal goal for this is to
9 reduce operation costs and create a single technical center
10 that's in closer proximity to Delphi's world headquarters as
11 well as their major customers and therefore in the company's
12 view continue to project and amplify Delphi's technical and
13 technological capabilities.

14 This process began in 2006. There has been a lot of
15 work done over the last six to eight months. The property that
16 has been selected comprises roughly 347,000 square feet of
17 office space and 90,000 square feet of lab space situated in
18 approximately thirty-eight to thirty-five acres and will allow
19 the debtors to locate a single state-of-the-art technical
20 center closer to the major OEMs that are situated in the larger
21 Detroit metropolitan area.

22 Your Honor, I'm not going to describe all of the
23 transactions that are fairly intricate. They are laid out, I
24 think, in detail in the motion. We have reviewed this
25 transaction with our statutory committees. No objection's been

1 filed. We'd ask Your Honor to grant the relief requested.

2 THE COURT: Okay. I will grant the relief for the
3 reasons stated in the motion and because it's unopposed. I had
4 two questions. First, do the parties want approval of the
5 Shelby stipulation or is it -- it's not mentioned in the
6 proposed order which I got, except for the fact that the
7 objection was withdrawn.

8 MR. BUTLER: Your Honor --

9 THE COURT: Do you want to insert that in the order?
10 I mean, it's certainly reasonable.

11 MR. BUTLER: We certainly can do that, Your Honor,
12 because it's intended to have the Court be in agreement with
13 our authority to enter into that assignment.

14 THE COURT: Okay. And then secondly, there was -- I
15 think in the motion on the Downers Grove lease there was a
16 little confusion about the date that it would run through. In
17 one place I think it says November 30th and then another place
18 it says October 31. Do you -- is it the later or the earlier
19 date?

20 MR. BUTLER: Your Honor, Mr. Meisler, who's been
21 working on this, advises me that both dates are considered
22 appropriate because one is an outside date and the other one is
23 one that we submitted the ten-day notice provisions of some of
24 the prior orders.

25 THE COURT: Oh, okay. All right. Then there's no

1 confusion. Okay. Very well. So I'll look for -- I guess it's
2 just a slightly revised order to deal with the Shelby
3 stipulation.

4 MR. BUTLER: Thank you, Your Honor. The next matter
5 on the agenda, matter number 9, is the brake hose business sale
6 motion at docket number 6742. There were some objections filed
7 in connection with this. Maricopa County filed an objection at
8 7016 and withdrew it at docket number 7170. Pima County filed
9 an objection at docket number 7197 and withdrew the objection
10 at docket number 7249. There is -- the purchaser is here, as
11 we indicated in our papers, and I'll describe in a little more
12 detail, there were no competing bids with respect to this
13 property so there was no option conducted by the company.
14 There were no other objections received.

15 I will note for the record -- and comment on this a
16 little bit later. And I think counsel for the USW will also
17 comment on it in a few minutes -- but the order provides that
18 this does remain subject to the provisions of the collective
19 bargaining agreement with the USW, the United Steel Workers,
20 and the rights they have pursuant to those collective
21 bargaining agreements. And we'll both comment on that in a few
22 minutes but this is subject to order.

23 I also, Your Honor, would like to introduce to the
24 Court Mr. Ronald Pretekin from the Coolidge Wall law firm who
25 represents the purchaser, the Harco purchaser, and Mr. Rick

1 Garber, who is the general manager of Harco, who are both
2 present in the courtroom today.

3 THE COURT: Okay. Thank you.

4 MR. BUTLER: Your Honor, the motion that we have
5 filed covers the use -- the sale of the debtor's assets used
6 exclusively in the debtor's brake hose business, free and clear
7 of liens, claims, and encumbrances, the assumption and
8 assignment of certain executory contracts and unexpired leases,
9 and the assumption of certain other liabilities.

10 We're here today in the two-step process we've used
11 for this transaction to ask for approval of the sale of the
12 brake hose business to Harco. We were before you last month
13 for approval of the bidding procedures and obtained an order
14 from you at docket number 6988 which approved bidding
15 procedures, bid protections, the manner and form of notice of
16 sale, and the setting of the sale hearing. While the debtors
17 have complied in all respects with the bidding procedure's
18 order and also endeavor to engage other bidders, there were no
19 other qualified bids submitted for business and there was no
20 option conducted.

21 Today, the debtors seek to have Your Honor enter an
22 order substantiating the form of the sale order that's attached
23 as Exhibit C to the motion. That order has been modified to
24 reflect the withdrawal of the two objections. We ask that Your
25 Honor authorize and approve the sale described in the motion,

1 the assumption and assignment of the assumed contracts and the
2 assumption and the assignment of the assumed liabilities.

3 Your Honor, in connection with the process -- the
4 sale process here. This is a process that has been -- and it's
5 described in the motion in detail -- it was an extensive
6 process used by the company in order to try to sell these
7 assets and ultimately to enter into the transaction with Harco
8 Manufacturing, LLC and Harco Brake Systems, Inc. And that led
9 to the proposed sale that's before Your Honor, which is for 9.8
10 million and other considerations.

11 This transaction is subject to the USW waiving the
12 no-sale clause in its collective bargaining agreement with
13 Delphi Corporation. Delphi continues to negotiate with the USW
14 to achieve this result. Those efforts will continue, you know,
15 beyond the entry of this proposed sale order if Your Honor's
16 inclined to grant the order. This issue is specifically
17 contemplated in the Harco purchase agreement and is a condition
18 for proceeding the closing. We hope to resolve this matter
19 with the USW and we have ninety days following entry of the
20 sale order before either party has a right to terminate. If a
21 waiver is not obtained, the parties may terminate and Harco
22 would be entitled to the expense reimbursement which is capped
23 at 100,000 dollars, which is set forth in the bidding
24 procedures order.

25 Your Honor, we've also requested that the ten-day

1 stay of Bankruptcy Rule 6004 and 6006 be waived because that
2 waiver's required under the terms of the sale and purchase
3 agreement. In light of the potential delay in reaching a
4 resolution -- I pointed out that was requested, Your Honor --
5 in light of the potential delay in reaching a resolution with
6 the USW because I don't think we believe we'll obtain that in
7 the interim ten-day period, we did ask Harco and they have
8 agreed that that is no longer a requirement -- they waived that
9 requirement under the sale agreement and we have therefore
10 deleted that from the modified order we had submitted. We take
11 seriously Your Honor's comments in the past about the use of
12 Rule 6004 and 6006 and concluded under the facts and
13 circumstances, as I sit here today, that that was an
14 appropriate course of action. I think counsel for USW wants to
15 address the issue of the USW's position on this motion.

16 MR. PETERSON: Good morning, Your Honor, Lowell
17 Peterson from Meyer, Suozzi, English & Klein for the steel
18 workers.

19 THE COURT: Good morning.

20 MR. PETERSON: As Mr. Butler sets forth, this order
21 does provide that the sale is subject to the terms of the
22 agreement. The agreement expressly provides that the sale is
23 contingent or conditioned upon a waiver by the steel workers of
24 the sale, no close provision in the collective bargaining
25 agreement. We have commenced negotiations.

1 THE COURT: I'm sorry, does the order itself -- I was
2 looking for that provision. I just want to make sure I --

3 MR. PETERSON: I think the provision that Mr.
4 Butler's talking about is on page 9.

5 THE COURT: Do you know what paragraph?

6 MR. PETERSON: Paragraph 3. At least this is what I
7 hope he's referring to, where it says, "subject to the terms
8 and conditions of the agreement." If it needs to be clarified,
9 presumably we can do so.

10 THE COURT: All right.

11 MR. PETERSON: Because I think --

12 THE COURT: So, I mean, it's the agreement that's
13 expressly subject to the steel workers, as opposed to the
14 order. The order just refers to the agreement?

15 MR. PETERSON: Yes, Your Honor.

16 THE COURT: Okay. All right.

17 MR. PETERSON: And the agreement itself specifically
18 has as a condition preceding the closing, as I described on the
19 record.

20 THE COURT: Fine. Okay. All right.

21 MR. PETERSON: We've had some discussions with the
22 debtors. It's thankfully not presumably a matter of there
23 being a lot of moving parts. It's just that we haven't nailed
24 down the -- essentially, the labor terms -- going forward. We
25 think that we probably will -- in fact, the steel workers think

1 that the outlines of the agreement have been in place for quite
2 some time. But we haven't got there yet. We hope to do so, we
3 certainly hope to do so within ninety days, and if so we would
4 be willing to let the sale go forward. It's unfortunate from
5 our perspective that this business, which we think is a
6 moneymaker, will be leaving Delphi, but that is a business
7 decision the debtors have made and so be it. And we just want
8 to make sure that our folks are protected going forward.

9 THE COURT: Okay. I think the record's clear then on
10 this point.

11 MR. PETERSON: Thank you, Your Honor.

12 THE COURT: All right. Anyone else want to address
13 this motion? Obviously there are no objections, so in light of
14 that fact and the motion itself, I'll approve it. I've been
15 through the order and I had a couple of minor comments but they
16 were truly minor so that will get entered today.

17 MR. BUTLER: Thank you, Your Honor. Your Honor, we
18 turn now to the contested portion of documents, certain of
19 these matters have been resolved and as you know, with respect
20 to the way in which we do a claims objection, which I'll
21 address in a moment, the unresolved nature of these objections
22 we move over to the claims track in any respect.

23 The next matter is matter number 10. This is the
24 eighth omnibus claims objection filed at docket number 6962.
25 In this objection we have objected to 236 claims that are

1 duplicative of other claims that have been filed or have been
2 amended or superseded by later filed claims or duplicative of
3 the aggregate liability asserted by two different claims or
4 have been amended or superseded by two different claims and are
5 survived by other claims, or claims were filed by individual
6 note holders and are duplicative of the consolidated claim
7 filed by Wilmington Trust. We've also objected to claims filed
8 by holders of Delphi common stocks, solely on account of their
9 stock filings, as well as claims filed by holders of common
10 stocks, solely on account of their holdings that were untimely,
11 and also claims merely protective in nature.

12 In summary, of the 236 claim objections filed, 110
13 proofs of claim asserted liquidated claims of approximately
14 40.2 million, which we believe are duplicative. One proof of
15 claim asserted a liquidated claim of approximately 9,300
16 dollars. It was filed -- it was duplicative of the master
17 proof of claim filed by Wilmington Trust. Eight proofs of
18 claim assert liquidated damages of approximately 17,900
19 relating to the Delphi common stock. And there were 117 proofs
20 of claim that asserted liquidated claims of approximately 1.2
21 million that were merely protective in nature. By protective
22 in nature, I mean claims that asserted liabilities that are
23 contingent in nature. For example, a lessor filing a proof of
24 claim for rejection damages in the event that the lease is
25 somehow rejected in the future.

1 As of March 21, 2007, in preparing for this hearing,
2 there were six timely filed formal responses. Those six
3 responses covered fifteen claims that asserted, in the
4 aggregate, approximately 8.2 million dollars. And we have
5 provided, in our omnibus reply, a chart to that extent that
6 summarizes those. As a result of those claims objections and
7 where we stand today, Your Honor, starting out with 236 claims,
8 and moving fifteen claims over to the claims track for further
9 resolution, today we're seeking relief from Your Honor with
10 respect to 221 uncontested claims that assert liquidated claim
11 damages of approximately 33.2 million dollars. And as I
12 indicated, we will follow the claims procedure order with
13 respect to the fifteen claims included in the six responses
14 that go now over into the claims track. We have an order we
15 submitted in that respect.

16 THE COURT: Okay. All right, in light of there being
17 no objections with regard to the claims that you seek to
18 disallow today and the objection itself, and obviously the
19 notice of the objection, I'll approve that relief.

20 MR. BUTLER: Thank you, Your Honor. Your Honor, I'd
21 like now to turn to matter number 11. This is our ninth
22 omnibus claims objection dealing with substantive objections
23 filed at docket number 6968. In this objection, we dealt with
24 1824 claims in six categories, as I'll describe in a moment.
25 Twenty proofs of claim -- the first category was twenty proofs

1 of claim aggregating approximately 26.9 million which
2 contained, in the debtor's view, insufficient documentation to
3 support the claim asserted. Sixty-eight proofs of claim in the
4 amount of approximately 6.5 million which contain liabilities
5 or dollar amounts that don't match the debtor's books and
6 records. Thirty-one proofs of claim in the aggregate amount of
7 approximately 10.4 million dollars which were not timely filed
8 pursuant to the bar date order. And 1,705 proofs of claim in
9 the aggregate amount of approximately 61.7 million that the
10 debtors seek to modify, still subject to further objection
11 dealing with claims in the aggregate amount of 55.1 million of
12 which the debtors seek to change the asserted debtor entity.
13 And as we have done in this last category, Your Honor, we seek
14 a modification, not a disallowance of the entire claim, but a
15 modification down to a particular amount or a particular
16 debtor.

17 As of March 21st, in preparing for this hearing, we
18 have received eighty-seven formal responses to the omnibus
19 objection, seventy-three of which were entered on the docket
20 and fourteen of which we received separately and kept track of,
21 but we've not yet hit the court's docket. Of those eighty-
22 seven responses, seventy were docketed and timely filed, three
23 were docketed and not timely filed, and fourteen were
24 undocketed. We have attached a chart and summarized that in
25 our reply. While we would normally move the objections or

1 claims dealing with the eighty-seven formal responses that we
2 received off to the claims track and we'd simply reserve on
3 issues like timeliness and so forth, I wanted the Court to note
4 the fact that in a proposed order we've submitted to you we do
5 not seek to adjourn the hearing with respect to seventeen
6 claims covered by fourteen responses because we believe we
7 resolved those responses with the respondents.

8 Eleven of the resolved responses pertain to claims
9 for which the debtors seek only to change the identity of the
10 alleged debtor. They don't seek to modify the dollar claim or
11 classification. And as we discussed that with the respondents,
12 we didn't believe -- they didn't, I think, understand the
13 relief that was being sought. The counsel for the debtor -- we
14 contacted each of those, we clarified the scope of the relief,
15 explained the debtor's not seeking to modify the amount or the
16 class of their claims at this time, although we'd reserve that
17 for future objection, but rather change the identity of that
18 entity. As a result of that clarification, eleven of the
19 respondents agreed to the relief requested and we think those
20 should be resolved, notwithstanding the objection, and we've
21 noted those in the proposed order.

22 One respondent asserted the claimant agrees with the
23 relief requested by the debtor in the ninth omnibus objection
24 so it was a response that was filed but it said they agreed
25 with us and therefore we believe that relief is appropriate.

1 An additional respondent asserts the claimant withdrew its
2 three claims prior to the filing of the ninth omnibus claims
3 objection. And we took that pleading for its face value and
4 if they're saying it's withdrawn, then we believe, for the sake
5 of clarity, we can get the relief that we're seeking dealing
6 with that matter. And, finally, we agreed to withdraw our
7 objection with respect to a claim covered by other response.
8 And so in that, one of the fourteen claims was resolved in the
9 claimant's favor, if you will, upon further review of their
10 merits of their position.

11 Therefore, because the fourteen responses I've just
12 summarized for you, covering seventeen proofs of claim
13 resolved, we don't seek to adjourn the hearings or put those
14 particular matters on the separate claims track. Putting aside
15 those responses, then, the unresolved responses cover 122
16 proofs of claim, asserting liquidated claims of approximately
17 37.8 million dollars. And those would go to the claims, as is
18 our custom.

19 THE COURT: And those, again, include the undocketed
20 ones but the ones that were served on you?

21 MR. BUTLER: Both for the undocketed ones that we
22 received and for the ones that were not timely, we moved those
23 over to the claims track, reserved our rights to address those
24 issues at a later date.

25 THE COURT: Okay.

1 MR. BUTLER: So that means, Your Honor, that the
2 order we have submitted to you in connection with our omnibus
3 reply, we're now seeking to deal with the uncontested portion
4 of the ninth omnibus claims objection. It covers approximately
5 1,702 claims, asserting liquidated damages of approximately
6 67.7 million. We're seeking to expunge 97 of these claims with
7 an asserted amount of approximately 23.1 million. And with
8 respect to the balance, I think it's about 1605 claims that
9 assert 44.6 million that were seeking to modify the indemnity
10 of the debtor, the class and/or the amount of the claim. If
11 Your Honor enters that relief, it will result in a reduction of
12 the asserted amount of those claims to about 40.2 million,
13 dollars which will then go back into the claims hopper for
14 further review on other grounds.

15 THE COURT: Okay. All right. Again, in light of the
16 unopposed nature of the relief that you're seeking today and
17 the notice and the basis for that relief set forth in the
18 objection, I'll grant it.

19 MR. BUTLER: Thank you, Your Honor. Your Honor, we
20 now move to matter number 12. This is the lead plaintiff's
21 motion for modification of the automatic stay. It's filed
22 originally at docket number 1063. In modifying the stay
23 originally, for the purposes of going to the MDL litigation
24 before Judge Rosen to address matters relating to the PSLRA
25 stay, you invited the lead plaintiffs to come back to this

1 court on an expedited basis when it was appropriate to do so.
2 They received the relief, or at least part of the relief they
3 were seeking. There was a partial modification of the PSLRA
4 stay entered by Judge Rosen. That led to the lead plaintiff's
5 filing a request for an expedited consideration which we agreed
6 was timely and appropriately filed under the case management
7 order of docket number 7128. We have filed our supplemental
8 objection at docket number 7344 as well as a supplement last
9 evening to advise the Court that Judge Rosen had denied the
10 motions for reconsideration of his earlier opinion modifying,
11 in part, the PSLRA stay.

12 Your Honor, as we advised chambers very late in the
13 evening last evening, counsel for the lead plaintiffs and
14 counsel for the debtors spent a good deal of time talking
15 through these issues yesterday. And Mr. Sherman, the general
16 counsel of the company, who is present in the courtroom today,
17 led those discussions on behalf of the debtors in terms of
18 being directly involved. It is the company's view that as we
19 move in towards and prepare for emergence from Chapter 11, that
20 we need to find a mechanism to deal with these issues.
21 Obviously, the litigation is in the district court in Michigan
22 but it does have -- there is an important involvement and
23 interplay between that litigation and the company's plan of
24 reorganization and our eventual emergence here. And we wanted
25 to begin to create a channel for trying to sort these matters

1 out. They're complex, the positions that the lead plaintiffs
2 have on certain matters are not consistent with the views, for
3 example, of our statutory committees on some of the same
4 subjects. We have to deal with a variety of those issues. We
5 certainly have to deal with and respect all the carriers in
6 that and there will obviously, at some point, if we're
7 successful in working this out, there are a bunch of other
8 individual plaintiffs involved and there is a coordination
9 between Judge Rosen's courtroom and this courtroom that we've
10 already had to --

11 THE COURT: And you said the litigation is in
12 Michigan but the stay hasn't been lifted in respect to the
13 underlying claim against Delphi?

14 MR. BUTLER: Correct, Your Honor.

15 THE COURT: All right.

16 MR. BUTLER: And so there is that interplay, and as
17 we made the point in our papers, and without belaboring the
18 point or arguing it today, we believe that the case law and the
19 statutory predicates of the PSLRA stay, which is only an
20 interim stay through the pleadings process in the MDL
21 litigation, and the automatic stay here are very different.
22 But the good news is that Mr. Coffey, who is present right
23 behind me --

24 MR. COFFEY: Good morning, Your Honor.

25 MR. BUTLER: -- who's leading the -- who is one of

1 lead counsel for the MDL plaintiffs, and the company were able
2 to sort out an interim resolution of this, which I'd like to
3 describe to the Court. We will prepare an order that would
4 modify the automatic stay consistent with the statements I'm
5 about to make but Mr. Coffey -- we would like to work through
6 that order and submit it to chambers in the next week or so.

7 THE COURT: Okay.

8 MR. BUTLER: We'll try to go through it.

9 THE COURT: Okay.

10 MR. BUTLER: Essentially, Your Honor, what we have
11 agreed to do is to produce certain documents on a voluntary
12 basis to the lead plaintiffs, and I'll describe those in a
13 minute, subject to the removal of documents that we contend are
14 privileged or subject to work product, and we would provide a
15 privileged law to them in that respect, and they've agreed, as
16 I'll describe in a minute, to not fight the privilege issues
17 until a later point in time. So the idea here is to get a
18 significant amount of documents in the hands of the lead
19 plaintiffs so they can begin their work in educating themselves
20 about some of the underlying issues.

21 My personal hope is that that will lead to a
22 settlement track in terms of being able to work with all of the
23 parties that have an interest in this, over the next number of
24 months, towards a settlement track. The company has hoops it
25 has to jump through. We have to deal with our statutory

1 committees; we have to deal with the carriers and others before
2 we're in a position to initiate those discussions. But we
3 intend to jump through each of those hoops in a prompt manner
4 to the extent that we are able to do so, that's certainly our
5 view of this.

6 So we start today with agreeing with the lead
7 plaintiffs that we will produce to them some 576,000 pages of
8 responsive documents previously produced to the Securities and
9 Exchange Commission, subject to reviewing and removing from
10 that production any documents that are privileged or constitute
11 a work product. In addition, Your Honor, there is a key word
12 database of documents that is described in paragraph 10 of the
13 declaration of Joseph E. Papalio and it was filed in support
14 of our objection to the motion. And that paragraph 10
15 described documents that were identified as responsive after
16 key word searches were conducted on a database that had been
17 constructed based on electronic searches of computers and
18 e-mail files and other matters. And we've agreed to produce
19 the documents that are in that key word database -- or I should
20 more properly say that were the subject of those key word
21 subjects as described in paragraph 10 of Mr. Papalio's
22 declaration, again, removing from that production any documents
23 that are privileged or constitute work product. And I've told
24 Mr. Coffey that I believe that those documents are included
25 within the 576,000 pages, but for the sake of clarity on this

1 record, to the extent that they're not, we will still produce
2 them.

3 Other aspects of this agreement, Your Honor, are as
4 follows. As I said, we'll provide a privileged log to the lead
5 plaintiffs. We have agreed to go through a voluntary process
6 with the lead plaintiffs to demonstrate to them that the
7 production we're making contains sufficient information to
8 allow them to formulate and consider the pursuit of a possible
9 settlement strategy of this matter. And in doing that, we will
10 produce to them the key word search terms that created the key
11 search documents that are being turned over to them. And we
12 will also provide them with information regarding the
13 collection and selection of the data that was included in the
14 master database against which this key word search database was
15 derived, which is a smaller subset of those documents.

16 We have agreed that we will produce these documents
17 on a rolling basis as we review them. We had not reviewed them
18 for privilege before in other matters, but we'll produce them
19 on a rolling basis. We expect to be able to begin producing
20 those documents next week. We're going to use reasonable
21 efforts to produce those documents over the next month. We
22 intend to coordinate closely with Mr. Coffey as colleagues on a
23 cooperative basis and I don't expect there to be issues
24 surrounding that production.

25 THE COURT: So there's not an outside date, it's more

1 governed by good faith?

2 MR. BUTLER: It's governed by good faith. I had said
3 to Mr. Coffey that I would say on this record our goal is to do
4 it in the next month, and that's what we're going to work on
5 doing very seriously. We've reviewed that. It is, you know,
6 big cases have big numbers with them and translating into
7 actual work that has to be done looking at 576,000 pages takes
8 some amount of time.

9 THE COURT: But this process seems consistent with
10 Judge Rosen's remarks about the parties discussing ways to
11 streamline those issues.

12 MR. BUTLER: Yes, I believe it is, Your Honor.

13 THE COURT: Okay.

14 MR. BUTLER: This settlement would be an interim
15 settlement of the motion. The motion would be adjourned
16 without a date, subject to being placed back on this Court's
17 calendar on short notice after the Michigan district ruled on
18 the motions to dismiss pending in that court. So there would
19 be a period of time. Similarly, we've agreed that we reserve
20 all our rights on the privilege issues and to fight those
21 issues and selective waiver issues and all that which would be
22 argued not earlier than the time that that motion was brought
23 before this Court, either have Mr. Coffey included in that
24 motion or file a separate motion with respect to it. But that
25 issue is reserved. The idea is to get documents in their hands

1 now and not fight about the privilege issue at the moment.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, we also have agreed that
4 they may use the documents we're going to produce to them for
5 any purpose except that they may not be used to amend their
6 complaint in the court or to be used in the pleadings process
7 leading up to the determination of the pending motions to
8 dismiss. That's not the purpose of making this production to
9 them. There is an issue that we have agreed with them we need
10 to address and that is they have filed a current motion to
11 amend their complaint and if it turns out that Judge Rosen
12 decides that he'll grant that motion and put off in abeyance
13 the motions to dismiss until the amended complaint is filed and
14 those motions were updated vis-a-vis an amended complaint,
15 we've agreed that we would modify the stay here so that Judge
16 Rosen could determine whether or not these documents that are
17 being produced could be used for purposes of that amended
18 complaint. We reserve our rights, but that argument would not
19 take place in this courtroom. That argument on that narrow
20 issue in that narrow circumstance would take place in the
21 district court with both parties having reserved their rights.

22 THE COURT: Okay.

23 MR. BUTLER: What we didn't want to do, either of us,
24 is end up in a situation where Judge Rosen makes some
25 determinations about the complaint pending in front of him and

1 then on that narrow issue we say, well, that's fine, Judge,
2 but, you know, these documents or the stay hasn't been lifted.
3 And we just thought it was better to have that argument in
4 front of Judge Rosen.

5 THE COURT: Right. All right.

6 MR. BUTLER: Your Honor, we, as I indicated, each of
7 us, each of the lead plaintiffs and the debtors reserve our
8 rights regarding our assertion of the attorney/client privilege
9 and work product production with the documents that we're
10 producing. And I've indicated that this would not be
11 determined by this Court prior to any renewal of this motion by
12 the lead plaintiffs, in accordance with my earlier remarks.

13 Finally, we've agreed to enter in, with the lead
14 plaintiffs, a protective order in the bankruptcy court here
15 similar to protective orders you've previously entered to
16 protect the use of personal information involving the privacy
17 of third parties. And we'll work out the scope with Mr.
18 Coffey, but this is really intended to cover things like Social
19 Security numbers and other personal information that might be
20 in the databases that would be protected under, and should be
21 protected under, various privacy laws.

22 It is not intended, in the example that Mr. Coffey
23 used to me earlier, that if there's a codefendant that's a
24 corporation and, you know, they wanted us to keep something
25 private, that this protective order would keep that private,

1 that wasn't the intention of it. It's more for what I would
2 call the customer privacy issues that are a concern to debtor
3 corporations with respect to employees and other similar
4 examples.

5 Your Honor, that constitutes the general principles
6 of our settlement today which Mr. Coffey is going to address in
7 just a moment. The debtor appreciates the constructive nature
8 in which the lead plaintiffs have entered into these
9 discussions. There is, obviously, in any major Chapter 11 case
10 as large and complex as this that involves this kind of
11 litigation, there does need to be, with all respect to the
12 adjudication of the complaints and the process that occurs in
13 the MDL process, there is a process that has to occur in this
14 Court as part of the reorganization process. And we are, I
15 think, pleased and appreciative of the fact that that process
16 now has the opportunity, I think, to begin on a constructive
17 tone.

18 THE COURT: Okay. Well, I saw you nodding along with
19 Mr. Etkin in the background, but is there something you want to
20 add to that summary?

21 MR. COFFEY: Your Honor, Sean Coffey of Bernstein
22 Litowitz, cocounsel for the securities lead plaintiffs. Mr.
23 Butler has faithfully described our agreement today.

24 THE COURT: Okay. All right. So I'll look for that
25 order -- I guess you gave a copy to the two committees -- just

1 to see if it actually says what you said it says.

2 MR. COFFEY: Yes, we described this in general terms
3 to the committees earlier this morning before we came in here.

4 THE COURT: Okay. Fine, thank you.

5 MR. COFFEY: Thank you, Your Honor.

6 MR. BUTLER: Your Honor, if we could briefly move to
7 matter 14 on the agenda, this is the National Union Fire
8 Insurance Company of Pittsburgh's declaratory judgment
9 involving a complaint relating to a matter not unrelated to the
10 MDL litigation, involving whether or not the fees that the
11 company has incurred are appropriately dealt with under our
12 insurance policies. Mr. Berger's handling this matter and we
13 need to address the Court on this subject.

14 THE COURT: Okay.

15 MR. BERGER: Judge, Mr. Butler gave you the sum and
16 substance of the adversary proceeding. Your Honor so ordered a
17 stipulation extending the defendant's time to answer until
18 April 9th. This adversary proceeding was commenced after
19 ongoing settlement negotiations broke down. We're hopeful
20 they'll be restarted. We're waiting for either a phone call or
21 an answer. There is an ADR provision in the policy but so far
22 the parties have been focusing more on how to get from A to B
23 than addressing that point. With Your Honor's consent, we'll
24 adjourn this to the next omni hearing?

25 THE COURT: Okay. That's fine, although the last

1 thing you said -- and I don't remember this, maybe we've gone
2 over this before -- does the ADR cover the subject matter of
3 this particular matter?

4 MR. BERGER: Sorry? Does --

5 THE COURT: Does the ADR provision cover the issues
6 in this matter?

7 MR. BERGER: In this adversary proceeding, I believe
8 that they will.

9 THE COURT: All right, so --

10 MR. BERGER: If it's triggered, we may have to come
11 back to Your Honor and say we're headed in that direction.

12 THE COURT: Okay. All right. But hopefully the
13 parties will focus on trying to resolve it since coverage
14 litigation presents its risk to the insurer always.

15 MR. BERGER: We appreciate that and we'll be sure to
16 tell the defendant about today's conference.

17 THE COURT: Okay.

18 MR. BUTLER: Your Honor, that leaves on the omnibus
19 agenda for March only one other matter, matter 13, which is the
20 first half of 2007 KECP. This will be a contested hearing.
21 We'd like a few minutes to consult with the objectors and
22 prepare for that. And we were wondering if we could have a
23 fifteen-minute recess at this time.

24 THE COURT: All right. So I'll come back at 11:15.
25 Is there going to be a portion of this that you expect to be

1 under seal, or not?

2 MR. BUTLER: I don't think so, Your Honor.

3 THE COURT: Okay. Fine.

4 MR. BUTLER: I mean, the mechanics we've used in the
5 past is, you know, has been to refer to the confidential
6 information and not summarize it openly in court --

7 THE COURT: Right.

8 MR. BUTLER: -- as Your Honor has it.

9 THE COURT: Right. And I did receive the joined
10 exhibit binder. So I'll be back at 11:15.

11 MR. BUTLER: Thank you, Your Honor.

12 (Recess from 10:58 until 11:29)

13 THE COURT: Please be seated. Okay, we're back on
14 the record on Delphi.

15 MR. BUTLER: Thank you, Your Honor, Jack Butler again
16 for the debtors. We are here on the last matter on the March
17 omnibus agenda, it's matter number 13, this is the second
18 supplement to the KECP involving the AIP program for the first
19 half of 2007. The supplement was filed at docket number 7200
20 and we're here today to review this first half supplement
21 because of objections raised last summer to the debtor's
22 proposal. We'd simply reviewed these with the committee as
23 going forward but instead the objectors, including some of the
24 objectors who are here today, wanted us to come back publicly
25 on the record to deal with this matter, and we are here to do

1 that.

2 This is a supplement to the motion originally filed
3 at docket number 213 at the beginning of the case. And the
4 only objections filed to this are filed by our unions that --
5 our U.S. labor unions -- that would include the IBEW and the
6 IAM and the IUOE who filed joint objections at docket number
7 7324. The UAW's objection is at docket number 7325. The USW's
8 objection at docket number 7327 and the IUECWA's objection at
9 docket number 7335.

10 Your Honor, we filed an omnibus reply last evening
11 that addresses those objections and provides a summary of the
12 objections, which is also Exhibit 14 in the joint exhibit book,
13 as well as the payout curves with the corrected tables. The
14 tables had typographical errors in them that we needed to
15 confirm with the creditors committee. We've had to correct
16 tables. We've done that. Those are now attached to our
17 omnibus reply. And also the Exhibit C to the reply are some of
18 the structural compensation charts that are also Exhibit 14 to
19 the joint index of exhibits.

20 Your Honor, we have reviewed the joint index of
21 exhibits -- these are Exhibits 1 through 21 -- with the
22 objectors. My understanding is there is not objection to
23 admitting these matters into evidence. The declarations would
24 be subject to cross-examination, which we'll address in a
25 moment. But subject to cross-examination on Joint Exhibits 6,

1 7, and 8, Your Honor, I'd move the admission of Exhibits 1
2 through 21 into evidence.

3 THE COURT: Okay. Hearing no objections, those will
4 be admitted.

5 (Joint Exhibits 1 through 21 were hereby received for
6 identification, as of this date.)

7 MR. BUTLER: Thank you, Your Honor. Your Honor, to
8 try to do this in an efficient matter -- and Your Honor has
9 dealt with this issue in the past -- we're going to try to get
10 the evidence in and then we'll all address these positions in
11 closing arguments, if that's acceptable to Your Honor.

12 THE COURT: Okay.

13 MR. BUTLER: The testimony that needs to come in
14 evidence are the three debtor declarations. The first
15 declaration, as I would offer into evidence, is Joint Exhibit
16 6. This is the declaration of expert report of Nick Bubnovich
17 in support of the second supplement to the KECP. And I would
18 offer that into evidence, subject to any cross-examination.

19 MS. MEHLSACK: Mr. Butler, I'd like to cross Mr.
20 Bubnovich, please.

21 THE COURT: Okay. Mr. Bubnovich, you can come up to
22 the stand, please. But I'll accept his declaration as direct.

23 MR. BUTLER: Thank you, Your Honor.

24 THE COURT: Just have a seat.

25 (Witness duly sworn.)

1 THE COURT: For the record would you spell your name,
2 please?

3 THE WITNESS: Bubnovich, B-U-B-N-O-V-I-C-H.

4 CROSS-EXAMINATION

5 BY MS. MEHLSACK:

6 Q. Good morning, Mr. Bubnovich. I'm Barbara Mehlsack and
7 I'm here today representing the operating engineers
8 Locals 18-S, and 832-S and the IBEW Local 663 and IAM District
9 10. And I understand, Mr. Bubnovich, that you had the primary
10 responsibility for designing the payout program that's the
11 subject of the hearing today, is that correct?

12 A. I am the debtor's compensation consultant. The design and
13 the payout curve was a joint undertaking involving not just
14 myself but also the company as well as the compensation
15 consultant from the unsecured creditors committee as well as
16 members of that committee also.

17 Q. What I'm hoping you can do is help me out in understanding
18 how you arrive at how in this particular case and how generally
19 you would arrive at a ratio between a performance level and a
20 payout that would satisfy the Court and anybody else that it's
21 a fair relationship in the sense that it is actually working as
22 an incentive program. And by that I mean there is the, I
23 believe there's the first half of 2006, the program ended up
24 with a fair number of individuals receiving a 200 percent
25 payout. There is a number that is in Mr. Sheehan's

1 confidential declaration estimating what the average payout
2 will be for the non-DSB members, the non-board members for the
3 second half of 2006. Is there some kind of formula, and I'm
4 really asking you to help me out in this, is there some -- is
5 it intuitive, is there a mathematical formula, is there a way
6 that you as an expert can say I'm satisfied that what we've
7 arrived at in this particular instance is a relationship, a
8 payout curve, that means this is a meaningful incentive
9 program. It's not, to use the words that the Court used the
10 last time around, it's not a layout, it will have an effect on
11 people's performance.

12 A. That's a complex question and a complex set of
13 assumptions. Let me start by saying that the performance
14 target, and if we might let's just talk about EBITDA
15 performance target at the corporate level, which is
16 approximately 124 million dollars, was based on the company's
17 business plan. That number was derived from -- or was first
18 established at the beginning of this year in January. It was
19 company's best estimate, based on the facts and circumstances
20 at the time, of the performance that it expected to achieve
21 under its business plan. The board of directors approved at
22 target. Now, if that target is achieved, then target bonuses
23 totaling, I believe approximately, twenty some million dollars
24 would be paid to the executives, and by the executives I mean
25 the DSB, Delphi Strategy Board, as well as the non-DSB

1 executives. Now, is that helpful or is there something more
2 that you would like?

3 Q. No, well, maybe if I pose it to you in terms of a
4 hypothetical. If you turn to Exhibit 1, to the second
5 supplemental order, it's got -- are you there?

6 A. Yes, I am.

7 Q. Okay. For example, it says, a pad of 150 percent will be
8 made for non-DSB members for an EBITDA of 387 million, 387.4.

9 A. Okay.

10 Q. Is that correct?

11 A. Yes.

12 Q. If we were to end up at the end of the first half of 2007
13 with a hundred percent, let's say, of the non-DSB members
14 getting 150 percent payout, that would mean that the EBITDA was
15 more than three times -- the EBITDA achieved would be more than
16 three times the EBITDA that was projected. Would that tell
17 you, as an expert in this area, aha, maybe we should have set a
18 target higher than that and people would have worked harder,
19 whatever it is that this so-called incentive plan because the
20 debtor has been very clear that this is supposedly an incentive
21 plan and not a retention plan so presumably it works to incent
22 people to do something they would not otherwise do. Is there
23 some magic formula number that says if X number of people
24 achieve X percentage above a hundred percent, then our targets
25 were -- we undertargeted, or is there not? Is this a magic --

1 is there some kind of intuition, magic, what is it that leads,
2 I believe you and I guess the committee and everyone else, to
3 conclude that 150 percent payout for 387 million dollars EBITDA
4 is reasonable? And is there a judgment, a correction, that you
5 make afterwards on the basis, because it's my understanding
6 that indeed everybody realized that a correction had to be made
7 when the last time around there were a significant number of --

8 MR. BUTLER: Objection, Your Honor, this is more
9 testimony or something, it's not a question.

10 THE COURT: Well, it's hard to follow the question --
11 I think you're going to have to break it down.

12 Q. Is there some way of the rest of us saying, well, this is
13 a reasonable payout ratio?

14 A. Again, the curve -- the two curves on this page were the
15 product of negotiation between the company and the unsecured
16 creditors committee. I don't believe that the committee, and I
17 don't speak for the committee, would have allowed a curve of
18 any sort, or a payout that it thought was unreasonable. Now,
19 it is also fair to observe that, you know, this isn't a hundred
20 percent science. You know, there is some art. It's a judgment
21 as to what is fair, appropriate, or reasonable. Certainly I
22 would say that if the company's performance is 375 million
23 dollars of EBITDA, which is as you point out three times the
24 target performance, if that increase -- that increase would
25 result in an additional several million dollar payout to the

1 non-DSB participants, and that's a pretty fair ratio. Most
2 people would say for what amounts to about 250 million dollars
3 more of EBITDA to pay out, I think it would be an additional
4 fifteen to twenty million dollars, that that's a pretty good
5 ratio, common sense.

6 Q. And if everybody got, let's say, 150 percent payout, there
7 would not be a question that maybe we should have set the 100
8 percent target higher than we set it and therefore we would
9 have achieved an even greater EBITDA?

10 A. Well, I don't think you can look at a particular payout
11 for a particular period. The payout might be high because of a
12 number of factors, primarily performance was excellent or
13 outstanding. You know, I will concede the point that if the
14 payout is always at maximum over an extended period of time for
15 four, five, six, seven, eight years, that would tell a
16 reasonable person, well, the goal setting here maybe isn't what
17 it should be. But that hasn't been the case here.

18 MS. MEHLSACK: I have no further questions, Your
19 Honor.

20 THE COURT: Okay. Does anyone else have any
21 questions of Mr. Bubnovich? I have a question. The expert
22 report that you submitted says that in looking at comparable
23 companies, without the continuation of the AIP, Delphi would be
24 in the lower twenty-five percent, is that correct?

25 THE WITNESS: Correct.

1 THE COURT: When you look at the other companies to
2 make that determination, do you go into the level of detail
3 where you look at the -- or project the likelihood that the
4 triggers that those other companies set for the bonus levels
5 will be met?

6 THE WITNESS: No. The data that's used is from two
7 sources. In the case of the DSB, we benchmark them against
8 them peer companies. And in the case of the non-DSB, because
9 there's 400 plus people, we use survey data. Now, in using
10 both sources, really, you have a wide variety and number of
11 companies and the assumption is, well, some of them may have
12 paid out at maximum, some of them at target, and some of them
13 below target. So that's the way that's taken into account,
14 because you've got so many data points.

15 THE COURT: Is it your experience that comparable
16 firms generally set their targets in the way that Delphi has --
17 obviously not after consultation with a creditors committee,
18 except for a couple of them, but generally with the same
19 methodology?

20 THE WITNESS: Yes, absolutely.

21 THE COURT: Okay. Thank you. Any re-direct?

22 MR. BUTLER: No re-direct, Your Honor.

23 THE COURT: Okay. You can step down, Mr. Bubnovich.

24 MR. BUTLER: Your Honor, I'd now like to offer into
25 evidence, and for cross-examination, Joint Exhibit 7 which is a

1 declaration of John D. Sheehan in support of the second
2 supplement. This has been marked highly confidential and I'd
3 offer it into evidence at this time.

4 THE COURT: Okay. Does anyone want to cross-examine
5 Mr. Sheehan? Okay. Then I will, again, accept his declaration
6 into evidence.

7 MR. BUTLER: Thank you, Your Honor. Finally, Your
8 Honor, and I'd actually like Mr. Naylor to stand so that I can
9 introduce him to the Court. We have in the courtroom today
10 Craig G. Naylor, who is chairman of the company's compensation
11 committee, a member of the board of directors who's an
12 independent director of the company. Mr. Naylor assumed the
13 role of compensation committee chairman this year and this is
14 the --

15 THE COURT: Is that because the other gentleman had
16 to testify last time?

17 MR. BUTLER: Well, I don't want to connect those
18 dots, but he did retire from the board, Your Honor.

19 THE COURT: Okay.

20 MR. BUTLER: No, actually, he'd been appointed to
21 another board and a couple of boards and needed to limit the
22 number of boards he was on. But Mr. Naylor is an independent
23 director of the company and chairman of the compensation
24 committee. He has submitted his declaration in support of the
25 second supplement and that's Joint Exhibit 8 and we'd like to

1 move that into admission, subject to cross-examination.

2 THE COURT: Okay. Does anyone wish to cross-examine
3 Mr. Naylor? All right. I'll admit his declaration -- his
4 testimony.

5
6 MR. BUTLER: Thank you, Your Honor. What I'd like to
7 then do is move into the closing argument, present the
8 company's case, Your Honor, and then I'll come back up after
9 with Your Honor's permission. Reserve some time and come back
10 up after the objectors have presented their objections.

11 THE COURT: Okay.

12 MR. BUTLER: Your Honor, as I've mentioned at the two
13 prior hearings back in February and July of 2006, there are
14 essentially four components to the executive compensation
15 structure at Delphi. And those are illustrated in the Exhibit,
16 Joint Exhibit 2, that's been admitted into evidence, and I have
17 one of those pages here on the easel, which is the page that
18 talks about the executive compensation structure of the first
19 half if AIP were approved. And you can see that the first
20 component is salary or base wages. Twenty percent of the DSB's
21 total compensation or total direction compensation comes from
22 that program. The benefits that they receive, health care and
23 other benefits, comprise about six percent of the total piece
24 of the pie that they would get. If Your Honor were to approve
25 this KECP as you have in the past, the Rangel incentive

1 opportunity would comprise twenty-one percent of the pie. And
2 the remaining fifty-three percent, in the case of the Delphi
3 strategy board, really is the long-term incentive program
4 piece, which the company has agreed to address in connection
5 with the plan of reorganization. It's intended to be addressed
6 through the emergence program, which has two components. The
7 cash emergence program and the equity emergence program. The
8 cash program is backward looking, trying to address this
9 competitive shortfall, that's defined on Exhibit 2 here in some
10 way with respect to the Chapter 11 case, and then the emergence
11 equity program is designed to look forward eighteen months into
12 the future in connection with the reorganized company. Your
13 Honor is aware of the fact that after consultation with the
14 committees and trying to sense the best way to address those
15 issues, we did take the emergence program off the calendar and
16 we've incorporated it in the plan of reorganization process.
17 And that's also addressed in the EPCA that has been approved by
18 Your Honor, and we're involved in the process, in the equity
19 investment process, with the plan investors and with the
20 creditors committee, moving forward in evaluating what a
21 competitive executive program design would be. And Your Honor
22 will have an opportunity to -- and stakeholders will have an
23 opportunity to examine that in connection with the plan process
24 and understanding the context of the entire plan. The company
25 was persuaded that was the appropriate way to address that,

1 even though it left the executives, some 500 executives,
2 running a global twenty-six billion dollar business on five
3 continents, in a position where they were -- during this case,
4 even if you approve the AIP, more than half of their direct
5 compensation opportunities are being held in limbo. And that
6 is the only stakeholder in this case, in terms of employees,
7 where that's the case. We've taken half of someone's
8 compensation and said, you know, we'll address that later.
9 And, ultimately, the company believed that the tradeoffs in
10 trying to address what is, admittedly always a controversial
11 subject, that that was the appropriate way to deal with that.

12 The company has a very different view, as Your Honor
13 knows, with respect to the annual incentive program. That
14 component in the case, the DSB, represents roughly a fifth of
15 their direct payment opportunities in their program design. It
16 is the company's belief that we need to continue this program.
17 The evidence you now have points out about how the program has
18 been developed. It is, you know, when I was here for the
19 second or the first supplement, the second half 2006 KECP, I
20 was here in the face of a couple of issues that were somewhat
21 challenging with respect to the objections, because we're
22 coming off a first half performance where people were paid, for
23 the most part, at the 200 percent end of the spectrum. So
24 there had been -- the company had considerably exceeded its
25 plan and most of the divisions that exceeded their plans, and

1 it was a robust performance vis-a-vis plan.

2 I also had the challenge at the time, Your Honor, of
3 relating from just a common sense perspective, relating the
4 steady state plan that had been developed in 2005 and into the
5 early part of 2006, into a plan that Your Honor could have
6 confidence in. It wasn't just sort of imagined and a number
7 picked out of the air. And that's always a challenge in the
8 beginning of a Chapter 11 case, because when you present to
9 stakeholders and to the Court a steady state plan of this is
10 what we think will happen if we don't do things. To a certain
11 extent that is a, as Mr. Bubnovich said, it's not a science,
12 it's an art. You are imagining what will happen to you, and in
13 this case we were imagining in the fall of 2005 and in 2006
14 what would happen to this company when we filed the largest
15 manufacturing Chapter 11 in history. And how does a company
16 like this, in a just in time supply chain, in this sort of
17 intricate complex place we are, how do we operate? And what
18 will happen to us? And, fortunately for stakeholders, because
19 the fact is business enterprise value has gone up as a result
20 of the performance in the Chapter 11, fortunately, some of the
21 concerns we had that might happen to us in the first half of
22 2006 did not materialize. And we, in fact, hit, as Your Honor
23 heard in testimony in connection with the first supplement, we
24 had some of the best operating metrics performance in the
25 history of the company during the first part of 2006. That

1 resulted in performance in excess of plan, and it resulted in
2 sort of 200 percent payouts. But it raised the question in the
3 minds of our stakeholders about, well, gee, are these layups?
4 How easy are these plans to accomplish? And we explained the
5 process to Your Honor in connection with the first supplement
6 that Your Honor approved, the second half 2006 KECP, and as
7 Your Honor is aware from the testimony and the record now, that
8 KECP performance turned out differently. There was a
9 performance that was achieved, but the average achieved
10 performance was 108 percent, or thereabouts, for DSB members,
11 120 percent, on average, for non-DSB members. And several of
12 our divisions did not receive their divisional payment at all,
13 because they didn't make their plan. So there wasn't a matter
14 of getting 200 percent. They got zero percent.

15 And, you know, I'm not quibbling with Your Honor,
16 because we respect Your Honor's decisions in this case, but we
17 have, you know, we continue to be of the view, as a company,
18 that having a cliff, a tight program on the downside where you
19 have to make the target or you get nothing, which is what we're
20 using in this Chapter 11 case, is not customary compensation
21 policy, but it's the policy we're dealing with here. And, as a
22 result, we had divisions that got nothing on account of
23 performance in very difficult times. I said difficult times
24 because this is a challenging environment. You only need to
25 read the newspaper to understand that OEM productions and their

1 production forecasts are going down and not up. We're very
2 volume driven as probably the largest supplier on the face of
3 the planet, and, you know, we're very sensitive to that. We're
4 extremely sensitive to commodity costs. And there are all
5 kinds of external factors that are not within the ability of
6 this management team to be able to manipulate for a performance
7 result. And, in fact, dealing with commodities, dealing with
8 OEM volumes, and dealing with the complexities of the chain
9 that we have been involved in, and, by the way, as a result of
10 consensual bargaining for agreements with the IUE and the UAW,
11 our two major unions.

12 This company, in 2006, also did the extraordinary
13 thing of having more than 20,000 people leave our U.S.
14 operations and have to then operate -- which was the
15 substantial amount of the hourly work force in our plants --
16 and then have to replace those -- what needed to be replaced,
17 on a need to run basis with temporary employees. And still
18 have our plants run on time. And while people can say, well,
19 gee, that's, you know, we understand it has to happen, well,
20 management has to make that happen. And, ultimately, that
21 happened. Tremendous cooperation from our unions. And
22 ultimately we were able to continue to run without any material
23 disruptions to our OEMs through that entire process.

24 But the second half performance was challenged. The
25 second half performance didn't end up where people would have

1 liked it to have been. And the kinds of, you know, payouts
2 that occurred in the first half would not occur. Now, I've
3 heard the argument made by -- and the objections that, gee,
4 there's something bad about paying 200 percent. I have quite
5 the contrary view. If, in fact, we could pay 200 percent on
6 these payout curves, and if you look at Exhibit 2, and if we
7 could actually pay 200 percent and achieve a result of north of
8 545 million dollars in EBITDA after, you know, taking out the
9 adjustments for transformation costs, which I'll talk about in
10 a moment, I suspect, even though we have difficulties with our
11 committees from time to time, I suspect they would be
12 celebrating with us, because what that would ultimately mean is
13 that the value of the company and the value of the enterprise
14 is enhanced. And ultimately paying twenty to thirty-seven
15 million dollars to 500 executives across the globe to make that
16 happen, as Mr. Bubnovich just testified, the ratio that Ms.
17 Mehlsack's looking for, that ratio is achieved under anyone's
18 business judgment. Because ultimately that increase in value
19 would be enormously positive to this company.

20 And I will tell you, from the company's perspective,
21 Your Honor, the performance in 2006, which exceeded the
22 expectations of the company, and, I will say, frankly, the
23 expectations of our stakeholders, at least those stakeholders
24 who are in close negotiations with us on issues, has resulted
25 in the company being able to think about a framework and think

1 about an approach that will, we hope, at the end of the day
2 involve a consensual arrangement with General Motors and with
3 our other stakeholders and with our unions that will allow the
4 company to emerge. And being able to negotiate that with
5 enhanced value, as opposed to having a melting ice cube in
6 deteriorating value, is enormously important to this
7 reorganization. Now, when you look at what's in the evidence,
8 Your Honor, and I just think it's important to understand that
9 we're -- you know, why things happened as they happened in
10 2006. What we have put into evidence, in addition to Mr.
11 Bubnovich's testimony about how this design was put in place,
12 and his view and the view of his firm, that this is an
13 appropriate and reasonable program. You have Mr. Sheehan's
14 declaration and his testimony in which he has walked through
15 the company's performance, how the business plan was developed,
16 and -- let me just say a word about that. I said last year,
17 but I was a little concerned about the fact I was coming in
18 with a steady state plan that people could take a shot at and
19 say, hey, Mr. Butler, you know, you just picked a number,
20 because you can't tie it to anything. There's no particular
21 business judgment because we're just trying to stabilize this
22 business.

23 That's not where we are today, Judge. Today I come
24 in front of you and tell you that we have targets that are
25 derived from a preliminary business plan, which is a five year

1 plan, which has been prepared, and is being vetted under our
2 framework agreements by investors who are considering putting
3 in 3.4 billion dollars in equity and by creditors' statutory
4 committees who are looking to sign on to the framework that has
5 been proposed. With the modifications, they may want to
6 negotiate with us, but that framework. And so the plan that's
7 been developed is a plan that's intended to generate equity
8 investment of a very substantial amount, seven or eight billion
9 dollars worth or more of debt financing, emergence financing.
10 And so the program that's been put together is, in the
11 company's perspective, a robust program that is intended to be
12 what the company's best estimates are. And Your Honor, I
13 think, has or should have the confidence this time around of
14 being able to say this plan and the targets derived from this
15 plan, the hundred percent target, are based on, or derived
16 from, something I can understand has independent purposes.
17 It's not just an imagination of what the stabilization of the
18 company may do. This is actually the plan. We're trying to
19 vet with stakeholders to emerge. And those targets, the
20 hundred percent targets, are derived from that. And the
21 argument that anyone might make that somehow this plan was
22 manipulated to be low so people could get thirty million bucks
23 or twenty-five million bucks given the underlying purposes of
24 this plan, I think, frankly, that is just a ludicrous argument.
25 Not only is it not true, it's just -- it defies any kind of a

1 smell test or creditability to it.

2 And so we start with the number which has been
3 publicly disclosed for the first half of 124.1 million. One of
4 the issues I want to clarify on the record today, and we talked
5 about in our caucus prior to -- we had a meet and confer caucus
6 during the adjournment recess, rather, this morning, with the
7 objectors, was -- several of the objectors pointed out
8 something I agreed with, which was that there's, I think, some
9 confusion about how we will take this business plan and
10 continue to apply, if you will, the UG concept. The minus U
11 minus G, they don't give the executives any kind of special
12 credit for General Motors contributions or savings from union
13 concessions in the collective bargaining process -- how that
14 process is going to work. And there was, I think, confused
15 about the fact that people were talking about what will --
16 adjusted for variances and people say, well, what do you mean
17 adjusted for variances, there's already a transformation
18 assumed in the plan. And that's correct. And I think it's
19 important to understand that one of the complexities this time
20 around is that our 2007 to 2011 business plan, from which the
21 first half 2007 targets are derived, does assume
22 transformation. It assumes we actually are going to be
23 successful. And, therefore, one of the things we're going to
24 have to do here is we're going to have to adjust out at the end
25 of the performance period the actual performance, good and bad,

1 pluses and minuses, that are related to the UG concept, the U
2 and the G concept we've talked about. And that is our
3 intention, and that is our commitment, and that is our
4 agreement with the creditors committee. And we've also
5 committed, as indicated in the papers and in our reply, we've
6 committed to sit down with the creditors committee ten business
7 days -- at least ten business days before we make any payments
8 under this program, and review all those calculations with the
9 committee. And I will also say, by way of disclosure, Your
10 Honor, that we're trying to sort that out even now in terms of
11 what's actually in the plan. Which has, of course, nothing to
12 do with what the actual performance might be. We'll have to
13 figure that out later. But there is some transformation in the
14 first half in the plan. We're sorting through that now with
15 our bank group, because on an independent track we are
16 renegotiating our covenants and other aspects of our 4.5
17 billion dollar DIP agreement in a -- we have a very positive
18 discussion going on right now with our banks. It was a bank
19 group meeting yesterday, and we expect to close the first
20 amendment at the end of this month. And working through that
21 our banks, of course, set their covenants not based on our
22 transformation. You would expect as a DIP lender, Your Honor
23 would understand this in particular. The banks want to
24 understand what's your non-transformed world look like, and how
25 are you going to perform there. And also, banks don't

1 necessarily accept the way in which a business plan is
2 calculated. They actually have their own definitions on what
3 they want you to count and not count in EBITDA and so forth.

4 And so we've been in the process of translating for
5 our banks in the last few days. The business plan EBITDA and
6 moving mechanically from the business plan EBITDA to the
7 adjusted steady state business plan that they want to set the
8 covenants on. And I will tell you that while that EBITDA
9 number is larger, is higher than 124 million, because they have
10 us add back things into EBITDA for their purposes, there was
11 actually a subtraction from that number for the effects of
12 transformation. That is to say the U and the G are not
13 positive in the first half of '07. They're, in fact, negative.
14 And that has to do with assumptions we had involving the
15 pricing deals we would enter into with General Motors, that are
16 not yet -- that won't have taken full effect, among other
17 matters.

18 I will also tell you, by way of disclosure, Your
19 Honor, we indicated in our reply, it is true that we're halfway
20 or almost halfway through the performance period. As Mr.
21 Bubnovich testified, the targets were set at the beginning of
22 the performance period, but it's taken us time to review our
23 business plan in detail, whether it's statutory committees,
24 it's taken us time to negotiate consensual payout curves with
25 the creditors committee. The committee spent a great deal of

1 time discussing that with us and wanting to go through and be
2 comfortable with the curves. And so we're in the middle of the
3 period. And it is true, although we can't quantify it for you
4 in terms of actual performance, because our books aren't
5 closed, but from an estimative perspective, it is true that we
6 are performing in the first quarter ahead of our business plan.

7 Again, I think that's a good news thing and a bad
8 news thing. From a restructuring perspective, from where I
9 sit, it's a great thing for the things I need to be working on
10 over the next few months. But I do want Your Honor to note
11 that we are tracking ahead. And, again, some people have
12 argued in the objections, gee, that's a bad thing. I don't
13 think it's a bad thing. And ultimately they say, well, we
14 shouldn't -- maybe we should change -- not do the program or we
15 should change the targets. I just point out it was -- as we
16 did in our reply, Your Honor, I think if I was standing in
17 front of you and telling you, gee, commodity prices went up by,
18 you know, thirty percent, and we're not going to make any of
19 our numbers, and therefore, Judge, we'd like to change all the
20 targets. I don't think they're -- you know, and adjust them
21 downward. I don't think we'd have any support in this
22 courtroom from anybody. They would say, hey, you set your
23 target; you're going to live by it. And that's what we intend
24 to do here. But I did want Your Honor to be aware of those
25 facts. And I do want you to be aware that our commitment, and

1 we've made this commitment to the union objectors, is that we
2 will adjust the performance in 2007 to take out the effects of
3 U and G consistent with the practices over the last year. And
4 after -- with an opportunity for review by the statutory
5 creditors committee and their financial advisors. So, Your
6 Honor, when you -- just in closing, from my perspective, when
7 you look at -- just a couple of other items I wanted to touch
8 on that are in the evidence. I talked about positive
9 performance and I would point out to Your Honor that there is
10 in the confidential book -- Exhibit 21 does have the
11 presentation made to the statutory committees earlier this
12 month, that was made -- put together by our chief executive
13 officer, by Mr. O'Neil, and his team. Just outlining the
14 performance during 2006 on a variety of metrics that the
15 company considers to be material. This presentation was also
16 made to General Motors and to our plan investors. And it is an
17 important plan of the performance evaluation of the company.
18 And I think it is important to note that from the company's
19 perspective, as the evidence and the declarations from Mr.
20 Naylor and others indicate, the company believes that these
21 incentive programs are working. We do believe that the
22 management team is working 24/7 to achieve maximizing business
23 enterprise value for all of our stakeholders. And we believe
24 that the program that we're proposing here is, in every
25 respect, reasonable and appropriate consistent with our past

1 practices since entering into Chapter 11 that Your Honor has
2 approved on two prior occasions. And ought to be approved
3 going forward. Your Honor, that's the sum and substance of our
4 presentation and I'm prepared to answer any questions from you,
5 and I'll come back after the objectors are done.

6 THE COURT: Okay. I had one question on Exhibit 2.
7 You had one of the pie charts up there. But I had a question
8 just on the first one, the first pie chart which is historic
9 Delphi executive compensation structure.

10 MR. BUTLER: All of theirs?

11 THE COURT: Right, that one. Historic, how far back
12 does that go?

13 MR. BUTLER: This was put together by -- with the
14 help of Watson Wyatt, with Mr. Bubnovich's team and the
15 company. And I think this is intended, and I'll look back to
16 them to help me on this, I think this measured the performance
17 over since the time of emergence for spinoff from General
18 Motors. Is that right? Is it the period -- this period -- the
19 historic structure? This is the --

20 MR. BUBNOVICH: Yeah, that's correct, Jack. It's the
21 structure since the time of the spinoff.

22 THE COURT: Okay. All right. Okay. I don't have
23 any questions right now. I may after hearing the objectors.

24 MR. BUTLER: Okay. Thank you, Your Honor.

25 THE COURT: Okay.

1 MS. CECCOTTI: Good morning. Babette Ceccotti,
2 Cohen, Weiss and Simon, for the UAW. Once again addressing the
3 subject of the AIP. Debtors reply, of course, notes the
4 Court's prior rulings on similar motions in the past in this
5 case. And I do want to assure the Court that it's not as
6 though the UAW is not mindful of the Court's prior rulings. We
7 don't have short memories. We felt that it was important
8 however to lodge an objection to, I guess, the re-upping or
9 reauthorization of the AIP. Again, at this time, because
10 frankly, the observation that we made in our objection, we
11 believe, really does bear restating. Given the fact that
12 although I think we acknowledge and agree that the case has
13 certainly advanced from the last time that we were all before
14 the Court on this issue, with respect to the unions and, from
15 my perspective, the UAW represented membership, of course,
16 matters are still in flux and still uncertain. I did note, of
17 course, Mr. Butler's presentation regarding the percentage of
18 salary that the AIP represents, and that this, as he framed it,
19 represents an instance where some portion of the salaries of
20 this particular group remain in limbo, I think were his words,
21 with respect to the deferral of the emergence -- the emergence
22 program, until later in the case. But I think it's important
23 for us to again remember that here we are talking about line
24 workers. The perception, as I know I've described to the Court
25 in the past, that the perception of the line workers in this

1 case, of course, right now is still uncertainty as to them and
2 their working conditions going forward. The emergence, of
3 course, will look towards the emergence of everybody going
4 forward, including this executive group and the group that will
5 be covered by what will be the forthcoming program that will
6 affect those folks. But right now there are efforts, as the
7 Court is aware, to resolve the labor issues and we think that
8 from the standpoint of the Court's articulation of the way the
9 Court views these programs, does it make good business sense
10 now to consider, once again, dealing with an AIP program for --
11 although it does affect several hundred people, is still
12 considered a select group when compared to the Delphi workforce
13 as a whole. And the viewpoint of my constituents, which is
14 that matters like this are really geared towards providing that
15 group with some certainty, even if their compensation is not
16 going to be totally adjusted here. It still reflects an
17 endeavor to provide some certitude for that group in terms of
18 that group's compensation for 2007. The debtors have also
19 asked, I noted in the order, that the Court actually schedule
20 the next time we all will be together to discuss the AIP in
21 July, whereas the membership represented by the UAW still faces
22 uncertainty. And the perception there is important, we submit
23 for the Court, in engaging right now the efforts of the unions
24 and the debtors to continue to address the labor matters, and
25 in determining whether it makes good business sense to approve

1 the motion this morning. We submit that it is critical for the
2 Court to consider the UAW's perspective, which is that this
3 program does constitute a distraction as they continue with
4 their efforts with the company. The trickle down effect to the
5 workforce, you know, which deals really in headlines from the
6 case, will simply be managers get bonuses. Not curve, not
7 necessarily focusing at all on the efforts of the creditors
8 committee to deal with the curve and to devise a program that,
9 in a negotiated way, makes sense to that particular
10 stakeholder. All of these details are simply not details that
11 get to the level of the shop floor. What gets to the level of
12 the shop floor are questions of -- sort of the general --
13 what's happening in the case generally. What's happening with
14 my wages and benefits when the company emerges from bankruptcy?
15 What will that look like? When will I get to know what that
16 looks like? What efforts is my union undertaking now to
17 protect my wages and benefits? And I see over here that
18 somehow there's a headline that says managers get bonuses. So
19 that's simply a reality that the union faces, not only in this
20 case, but in many other cases where in bankruptcy courtrooms
21 across the country, programs like this are brought to the
22 attention of the Court, for which approval is sought, and it's
23 a double standard that, frankly, even somebody like me who's in
24 courtrooms every day, unfortunately, on these matters, still
25 finds difficult to address, let alone the perception of the

1 line worker. So we believed that it was important, once again,
2 to bring to the Court and restate the union's view that while
3 the labor issues continue to be pending and unresolved, that it
4 does not make good business sense to proceed now to approve the
5 program and that these matters are best left deferred, as we
6 said the last time, until a time when there is greater clarity
7 for the wages and benefits affecting the UAW membership.

8 THE COURT: Okay.

9 MR. PETERSON: Good afternoon, Your Honor. Lowell
10 Peterson for the steelworkers. We rest principally on the
11 statements we made in our written objections. I do want to
12 underscore the frustration level felt by the steelworkers, both
13 the rank and file and the leadership. That here we are,
14 towards the end of March, and we haven't advanced past where we
15 were six to eight months ago. The unions really did step up to
16 the plate in a very forthright manner at that time, as it has
17 throughout Delphi's history, and addressed the company's needs,
18 and we are still not in a position to have our programs
19 finalized and brought to the Court for approval. If nothing
20 else, this KECP proves that when the company wants to get
21 things done, it can. And we just hope that the company wants
22 to get done our piece of this puzzle and hope that it will do
23 so very shortly. In terms of compensation being in abeyance or
24 in limbo, one of the problems that the steelworkers face is
25 that at least with respect to most of our members, and

1 certainly all the people who've been around for a while,
2 there's no question about what's going to happen. We're all
3 going to lose jobs. That's what's going to happen to the
4 steelworkers. The question is in what manner? What's going to
5 happen in the meantime and what happens when they finally close
6 the door on their pickup trucks and cars for the last time and
7 leave Delphi forever? We thought we had that stuff addressed,
8 and here we are, and it's still not done. And this simply
9 underscores our frustration with the process at this point.

10 THE COURT: Okay.

11 MR. PETERSON: Thank you, Your Honor.

12 MS. MEHLSACK: Good afternoon, Your Honor. Barbara
13 Mehlsack, and I'm here speaking for the IBEW and the IAM, as
14 well as the operating engineers. And, Your Honor, the last
15 time, if you don't mind, Your Honor, I'll --

16 THE COURT: That's okay. It's kind of a recalcitrant
17 microphone there.

18 MS. MEHLSACK: You know, the last time around, Your
19 Honor, Your Honor addressed this issue of our -- the union's
20 explaining to their members that there really is a connection
21 between paying bonuses to managers and the request for
22 concessions, because it's all about making the company more
23 competitive. The problem for the 135 IBEW, IAM and operating
24 engineer represented employees is, Your Honor, that there has
25 been no connection, because there's been absolutely zero

1 movement in connection with those bargaining units. We haven't
2 even reached the point, Your Honor, where we can say we
3 thought, as the steelworkers could say, we thought we had the
4 issue of what was going to happen to people when doors closed,
5 that -- what would happen to them. How much money would they
6 get? What would be the status of their health insurance? What
7 would be the status of their pensions? And the inconvenient
8 truth is, Your Honor, that we are both in limbo, and, to use
9 Mr. Butler's term, and -- on the one hand. On the other hand,
10 we've got people who know, as the steelworkers members know,
11 that they are going to be out the door, but they just don't
12 know then what's -- you know, what's going to be the status of
13 their being out the door. So that it is difficult, if not
14 impossible, to say to people -- again, as Mr. Peterson points
15 out, when the company wants to get something done, they can get
16 it done. The fact is the company has made it very clear to us
17 and to -- by us I mean to the IBEW, the IAM and the operating
18 engineers, that there will be no negotiations. Not even will
19 there be no deal, but at this point, they've told us, at a
20 corporate level, we can't even negotiate with you until we make
21 a deal with the UAW. And so when Ms. Ceccotti says on behalf
22 of her clients that paying this money now is -- she used the
23 word distraction, and I take that to mean that that constitutes
24 a distraction, an interference, an impediment, a slowing down,
25 whatever else you want to call it, of the ability of the

1 company and the UAW to reach a deal. What that then says to my
2 clients, and -- is you're going to continue in this state of
3 uncertainty for a long time to come. And so, Your Honor, the
4 company is prepared to pay between twenty and thirty-seven
5 million dollars out over the next several months to its
6 management, but it cannot commit to paying you, the IBEW, the
7 IAM, and the operating engineers, attrition money. And we
8 understand, Your Honor, that the company has an issue about
9 leave-takings, and that people not be encouraged to leave. In
10 our case, it's not incenting people to stay, it's making sure
11 that people don't leave before they're ready to leave. And my
12 clients have made it very clear that they're prepared to
13 make -- come to understandings with the company about how
14 people are going to leave and under what timing. And once
15 again, we've been met with a stone wall. So that from the
16 point of view of equity, Your Honor, I think it -- once again,
17 it's the inconvenient truth that the IBEW, IAM and the
18 operating engineers are the only group of individuals who have
19 achieved no resolution of any of the issues with which we
20 started this whole process. And we would ask again, Your
21 Honor, that serious consideration be given to deferring these
22 payments to such time as there is a resolution, a full
23 resolution, of the labor transformation issues.

24 THE COURT: Okay. Ms. Ceccotti, if I could do
25 something to break what I gather is still an impasse with the

1 UAW, I would surely do it. But if I conclude that this short-
2 term incentive program annual -- actually it's a semiannual
3 incentive program, makes sense as a stand-alone matter, I don't
4 see how that breaks a logjam. To suggest to the union that I
5 wouldn't approve it until after the negotiations were done
6 would either be just deferring something just for the sake of
7 deferring it or giving them the misimpression that it wouldn't
8 be approved. I mean, there have been instances where companies
9 in Chapter 11 have negotiated very meaningful and painful cuts
10 with their unions. And then, subsequently, and often only like
11 a month or two later, requested significant compensation
12 changes, usually in the form of -- not this type of
13 compensation change but the long-term incentives. And there, I
14 think understandably, the unions go nuts. Because, you know,
15 they say, well, what were we talking about for the last six
16 months? It just seems to me that when you focus on the
17 negotiating dynamic, I understand that it's easy because
18 it's -- and not to denigrate that too much, but it's easy to
19 say, you know, how can you talk, union leadership, when they're
20 getting bonuses? And I understand that that's a serious
21 political issue because there's appeal to the phrase for the
22 union. But wouldn't it be worse to give the union the wrong
23 impression? And to suggest that this wouldn't get approved?

24 MS. CECCOTTI: Well, Your Honor, let me try to
25 respond in this way. I think that -- and I think actually the

1 point was probably brought up more -- most clearly in the USW's
2 papers. The leadership, of course, has been involved in many
3 more of these cases, unfortunately, than the rank and file
4 workers are. This is, you know, with any luck their only
5 bankruptcy experience. And, obviously, if there is -- in any
6 negotiated situation the union needs the support of the
7 membership. And so the union has to operate on any number of
8 levels in any given situation, and programs like this resonate
9 very strongly with the membership, and the leadership is
10 acutely aware of that. And that is just something that needs
11 to be taken into account when -- again, speaking generically,
12 any union leadership goes to its members and says, okay,
13 we're -- you know, we had to make some tough decisions here,
14 and we're bringing this to you to vote on. And inevitably the
15 questions come back well, you know, what kind of a system is
16 this that, you know, we have to take cuts and, you know, the
17 Court just approved bonuses. Or, and you're quite right,
18 frankly, that if this were done after a negotiated agreement,
19 there would be the inevitable question about where's the shared
20 sacrifice? And we'd be facing that challenge. But these are
21 sort of inherent in the system that we have, or the system that
22 we've come to have, where a company can make use of the
23 bankruptcy court to address labor agreements and retiree health
24 and the like, while at the same time coming into court for a
25 host of other activities, including addressing its compensation

1 issues, or for management executives. So it's a challenge that
2 the union faces constantly in these cases, and it may not seem
3 to be logical in the way that it unfolds. But it does unfold,
4 and this is the way it unfolds, unfortunately. So that where
5 we have, right now, a situation where we don't yet have
6 anything to bring to the membership, there will -- as I said,
7 there will be this headline, management gets bonuses. And what
8 about us? And what does the future lie in terms of our own
9 sense of uncertainty? So, yes, I will concede to you that it
10 may very well be that at the end of the day, whatever program
11 it is that the company wants to roll out at emergence will be
12 met with a hue and cry of a different form, and that will be
13 something that will simply have to be addressed then. So I
14 don't know if it's a case of something being better now or
15 worse -- better or worse now versus better or worse later, but
16 the membership, as I say, these issues resonate very strongly
17 with the membership. Mr. Butler alluded to the challenges in
18 his own remarks. And it's just something that is a reality
19 that just, frankly, needs to be dealt with. You know, Congress
20 attempted to address it in the law with some mixed success, I
21 suppose. But it is a reality, and if companies are going to be
22 permitted to further these programs in bankruptcy, it is just
23 simply a reality that has to be dealt with, and I'm afraid I
24 can't give you a better, or perhaps from the Court's
25 perspective, more logical answer, but -- except to underscore

1 that is a reality that simply needs to be addressed.

2 THE COURT: Okay. Thank you. Okay.

3 MR. MAGARIK: Larry Magarik from Kennedy, Jennik and
4 Murray representing IUE-CWA. We'll rest in our submission.

5 THE COURT: Which I've -- I've read it.

6 MR. BUTLER: Your Honor, just a couple of
7 observations. When we started these cases, one of the things
8 we talked about was the necessary -- the need for the company
9 to be competitive in everything they did, and Your Honor has
10 addressed that need for competition in earlier rulings, the
11 need to be competitive. And one of the challenges we have is
12 that the facts in this case, and they're indisputable at this
13 point, but the facts in this case is that through testimony
14 over eighteen months, or almost sixteen months, I guess, is
15 that our executive compensation has not been competitive. It
16 has been competitively low. And that is in an inconvenient
17 truth for people, to use the phrase. It is a controversial
18 issue. But it is a fact. It is also a fact that our
19 compensation for our hourly workers is, on the main, not across
20 the board, but on the main is un-competitively high. And
21 trying to address bringing those two worlds into a competitive
22 state is a complex, controversial and difficult thing to do.
23 And we are in the midst of all of those issues. And I think
24 Ms. Ceccotti and I agree on more than we disagree on, as it
25 relates to the complexity of these issues. That is why,

1 notwithstanding the huge amount of heat we took for it, that
2 the company early in this case, in the first week of the case,
3 filed the KECP motion that had both the annual incentive plan,
4 which we did then and believe now, and respect Your Honor's
5 ruling that you don't agree with it, but believe is an ordinary
6 course type of program. And the emergence program, which we
7 concede is not ordinary course. It's why we put it out then.
8 Because the other inconvenient truth about executive
9 compensation is there is no good time, you know, in a Chapter
10 11 case to bring that subject up. Because the only people who
11 think it's important, in a positive sense, to reward managers,
12 tends to be the company and then sometimes the committees who
13 are looking for the return on improved business enterprise
14 value. But it is -- on the labor side, it is controversial.
15 Because while the headline may be that managers get bonuses,
16 that's really not the accurate headline. These are not bonuses
17 in the sense that bonuses are incremental to someone's
18 compensation. This is incentive compensation which is an
19 integral element of their direct compensation. You could not
20 have this program and increase salaries by the same amount of
21 the pie, I suppose. But it's the pie that's competitive. Not
22 the individual program. But it's only in Chapter 11, and only
23 with executives that we find ourselves coming to court and
24 having to deal with each element of the pie in front of the
25 Court. If I were sitting here doing that same thing with

1 labor, as opposed to honoring, as 1113 requires us to do, and
2 1114 requires us to do, each element of their contract during
3 the Chapter 11 case until we either collectively bargain
4 something or otherwise deal with the 1113, 1114, process, which
5 we've now suspended in this case to facilitate those consensual
6 negotiations. There would be a firestorm. And the fact of the
7 matter is while I share and empathize with the comments Ms.
8 Mehlsack made, for example, with respect to some of the
9 frustrations, Mr. Peterson's frustrations, they know as well as
10 I do that the reason we're not done with the smaller unions,
11 and not done with the USW, has everything to do with how one,
12 in the case of the USW, deals with the GM benefit guarantee and
13 the comprehensive settlement with General Motors, which is not
14 going to be completed until we have line of sight to General
15 Motor's satisfaction. With respect to the negotiations with
16 the UAW and the IUE. And the case of the smaller unions that
17 Ms. Mehlsack's speaking for today, they don't have a GM benefit
18 guarantee. But they want something to be -- they want to be
19 treated, you know, I won't say to get the guarantee, but they
20 want it recognized that they're treated in a way that is, from
21 their perspective, commensurate with that. And it is also, I
22 suppose, an inconvenient truth that -- I agree with Ms.
23 Mehlsack, we're not going to get that resolved until we resolve
24 the broader issues of the GM benefit guarantee, which are going
25 to be principally negotiated with the UAW and with the IUE-CWA.

1 And once those are resolved, we need to resolve some particular
2 issues on the interpretation of the benefit guarantee involving
3 the USW, which, I think, Mr. Peterson would acknowledge is not
4 a debtor issue. Although we're trying to facilitate it. It is
5 a difference of view between the GM and USW about what the
6 benefit guarantee means. And we have to resolve those issues.
7 So it's not as though this is something within our control that
8 the company is just not getting done. I think Your Honor has a
9 very deep understanding of the complexity of the issues and
10 what we are doing to try to accomplish it. I also regret that
11 bringing something controversial to the Court -- we need to do
12 this every six months, on this particular program. As Your
13 Honor knows, it was the debtor's desire to receive final
14 approval of the AIP structure, in connection with the first
15 supplement, after we got into the case, and we thought that
16 would be constructive, and that we would deal with the AIP in
17 court only if the creditors committee did not, in their
18 separate fiduciary analysis, believe it was an appropriate --
19 exercise the debtor's business judgment. And it was these
20 objectors together, I think, with the lead plaintiffs, who had
21 objected at the time. Who said no, come back every six months.
22 And we're largely here, in this public spectacle, dealing with
23 an AIP because the labor unions wanted us here. Because of the
24 objections they filed at the last objection. But we would have
25 preferred that this be dealt with in an order or course manner,

1 and vetted with, and supervised by the creditors committee.
2 And we've been able to do that successfully and meet their
3 challenges to this program on each of the occasions. And
4 that's not been, you know, speaking of layups, it's been hardly
5 a layup. The fact is there've been intense negotiations
6 between the committees. If you look at the payout curves that
7 are attached to the order and are Exhibit 1, the curves are
8 much more aggressive this time around. In terms of where
9 they're -- they're far more aggressive than the company wanted
10 them to be, but, the aggressive nature of the curves was
11 insisted on by the committee as they evaluated all the facts
12 and circumstances relating to the business plan. So, Your
13 Honor, I would ask, Your Honor, as you consider these issues,
14 to consider them in the context of the case, and to rule on the
15 evidence that's before you. I think the evidence is
16 uncontroverted that this is a reasonable exercise of the
17 debtor's business judgment. It has been vetted and approved by
18 our statutory creditors committee, and the net of this is that
19 if we are so fortunate as to be able to make payments on these
20 performance curves, and certainly at the higher end of the
21 performance curves as they've been adjusted by the creditors
22 committee, the net result of that is that there will be
23 geometrically more value going into the estate, and
24 contributing to the total enterprise value, than will be used
25 to pay the executives who, by anyone's, I think, definition,

1 will have had a role in making that happen. Thank you, Your
2 Honor.

3 THE COURT: Okay. Thank you. Okay, I have before me
4 the debtor's so-called second supplement to the KECP motion.
5 In reality, it is a motion seeking approval of the continuation
6 of their short-term annual incentive compensation plan for the
7 first six months of 2007. The issue came up at the last
8 hearing, and I should address it today as well, as to whether
9 such a motion needs to be made in the first place. One of
10 the -- in positions that the bankruptcy code puts upon a
11 debtor, which he would not otherwise have, is that actions out
12 of the ordinary course need to be subject to notice to parties
13 of interest and approval, if there's an objection. Whereas
14 under 363(c) of the bankruptcy code, actions in the ordinary
15 course do not need to be noticed and creditors don't need to be
16 given the opportunity to object to them. In some respects,
17 this annual incentive plan could be viewed as an ordinary
18 course activity. As the first page of Exhibit 2 shows, when
19 compared with the page of the exhibit that shows the effect of
20 this motion, is that it's in line, almost exactly on the
21 numbers, with Delphi's historic compensation structure, in
22 fact, going back to the beginning of Delphi's existence. In
23 terms of percentages allocable to salary, benefits, annual
24 short-term incentive and long-term incentive. On the other
25 hand, notwithstanding that treating this motion as one under

1 363(b) imposes stress on all of the parties, including, most
2 importantly, on Delphi's business. In respect of -- at least
3 its relations with its unions. It seems to me that unless the
4 key parties of interest are prepared to accept that this aspect
5 of Delphi's compensation structure is ordinary course, we need
6 to go through this exercise. And when I say exercise, I don't
7 mean it as one where the conclusions is foregone, but one where
8 the companies process, and ultimately its judgment, are tested
9 first by the parties in interest and ultimately by the Court.
10 The reasons here for treating it as an out of the ordinary
11 course transaction, I think, are twofold. One was perhaps more
12 significant early in the case than now. Which is that a key
13 element of any plan like this is the targets that the company
14 sets based upon its projections. And, particularly early in a
15 Chapter 11 case, as Mr. Butler discussed, those targets are
16 open to a lot of review, consideration, discussion and vetting.
17 Because they're uncertain further along in the process, and I
18 believe we are further along today, those targets do become
19 easier to understand and test and approach, perhaps, a degree
20 of clarity that's greater than many, if not most, companies
21 have out of bankruptcy because of the vetting process that they
22 go through. But it is still a process that involves some
23 uncertainty and, for that reason, it's one of the reasons that
24 a motion like this could be treated out of the ordinary course.
25 In addition, as the unions have noted, the effect of a

1 resetting of the targets, which is an element of this type of
2 proposal because it is a short-term compensation incentive, has
3 an impact, for better or worse, on the labor negotiations. It
4 can be, if one wants to, and I think one would have to, given
5 the evidence here, look at it with blinders on characterized as
6 a handout or a bonus for either political purposes or for
7 simply kvetching purposes. That happens. And I don't want to
8 downplay it, because I respect Ms. Ceccotti and her colleague's
9 views that it happens. On the other hand, at least those who
10 want to look at this type of program with a willingness to look
11 at it objectively and in detail, have the opportunity to do
12 that in the light of day, in a courtroom with full opportunity
13 to test it. And I would hope that those who really care about
14 these sorts of things in the union membership, and I think the
15 union is made up of people who are very serious and intelligent
16 people, will appreciate the process that Congress provided to
17 go through requests like this, to see whether they bona fide
18 and appropriate or not. And realize that if the process has
19 been fair, it is not necessarily the case that every dollar
20 that goes into an executive's pocket is a dollar out of my
21 pocket, but rather one that will improve the company as a
22 whole. Now, here I've reviewed the evidence and the
23 objections. And as with the prior hearings, I conclude, as I
24 think I have to procedurally, that first the triggers and the
25 targets were established in a fair manner that's not tainted by

1 self-dealing. That is, they were set independently of the
2 individuals who would benefit from this element of the
3 executive compensation package, first through the action of the
4 board, and in particular the compensation committee of the
5 board, as advised by outside professionals. And second, by the
6 official creditors committee, which has its own professionals
7 and which has as its members a representative group of Delphi's
8 creditors, including a union. And which, moreover, I'm sure is
9 very well aware of its fiduciary duties to all unsecured
10 creditors. The process has shown, to my mind, that first the
11 company and second the committee have looked at the targets
12 carefully, and looked at the underlying business plan carefully
13 in setting the triggers for the incentive payments. Then,
14 secondly, having reached that conclusion, I need to decide
15 whether under Section 363(b) of the code these target proposals
16 and the overall request is a valid exercise of the debtor's
17 business judgment standing alone without consideration of the
18 ongoing negotiations with the unions, and that is, primarily,
19 when I say ongoing, a reference to negotiations with the UAW
20 and the IUE, because, as an aside, I accept the proposition
21 that those are the critical negotiations here given their tie-
22 in to the GM relationship that Delphi has. Separate and apart
23 from those negotiations, this package for the next six months
24 clearly meets the business judgment tests. In his second
25 opinion in the Dana case, Judge Lifland helpfully listed some

1 of the factors that a court might consider under the 363(b)
2 test when it comes to an aspect of the compensation package
3 like this. Those are, as he lists them, is there a reasonable
4 relationship between the plan proposed and the results to be
5 obtained? Is the cost of the plan reasonable in the context of
6 the debtor's assets, liabilities and earnings? Is the scope of
7 the plan fair and reasonable? That is, does it discriminate
8 unfairly? Or, on the other hand, is it properly tailored to
9 the constituency it's supposed to cover. Is the plan or
10 proposal consistent with the industry standards? What were the
11 due diligence efforts of the debtor in investigating the need
12 for the plan? And general industry practice. And did the
13 debtor receive independent counsel in performing due diligence
14 and in creating and authorizing the insider compensation. I
15 have considered those questions and conclude that here this
16 plan, or this six month aspect of the debtor's compensation,
17 satisfies the business judgment standard in light of those
18 questions. I think it is fair to say that one should look at
19 the executive compensation here as a total package,
20 particularly given the historical backdrop. And in that
21 regard, it is obvious to me that a significant element of that
22 compensation package has been lacking throughout the case, and
23 will continue to be lacking until a plan is confirmed, and that
24 is the long-term incentive opportunity which, depending on
25 whether you're a junior or a senior executive, can run from

1 about thirty-three percent to over fifty percent of your
2 compensation. They're good reasons why the debtor is deferring
3 that question. They go both to what I think is a more close
4 tie-in to the labor negotiations. They also go to bankruptcy
5 concerns. In that, as the Court and the U.S. Airways opinion
6 that a couple of objectors have cited found, those types of
7 long-term incentive programs are so tied to the actual plan
8 structure, including stock allocation and capitalization, that
9 they're very hard to set in advance. And perhaps raise more
10 issues than the benefit of giving executives that third to
11 fifty percent of their compensation would benefit the company.
12 But this aspect that's before me today does not raise those
13 issues. It's raised colloquially as a bonus. But, to my mind,
14 is more clearly an element of the salary package than a
15 handout. Indeed, I think that Watson, Wyatt or Skadden or
16 anyone else out there would be well served to give some thought
17 to an alternative to the term bonus other than an AIP. And I
18 think there is -- there really is a distinction, particularly
19 as one looks in a colloquial term bonus. What I take away from
20 the evidence, not only from this hearing but other hearings, is
21 that the short-term annual incentive compensation here,
22 assuming that the triggers are correct, and I'll get back to
23 that in a moment. But assuming they're correct is something
24 that executives truly have a reasonable expectation of getting
25 if the incentive's from that. However, unlike the rank and

1 file, they also can be deprived of it, not only because of the
2 performance of the company, but also because of their own
3 individual performance. In that sense, it's not like salary.
4 It's worse, because if their supervisors believe that they have
5 not individually performed up to expectations, it can be
6 reduced. So assuming that the triggers are fair and correct
7 based on the debtor's projections, I do not view this as a
8 handout, but rather as something that's necessary so that the
9 debtor's executive team will be compensated at least somewhat
10 comparably to their competitors. As far as whether the
11 triggers themselves are appropriate, there's really not been a
12 contest on that, and I think that reflects the work done not
13 only by the company but by the creditors committee. And taking
14 away prior testimony and past hearings not only on these types
15 of motions, but also in connection with the planned support
16 agreement, it seems to me that if, in fact, as Mr. Bubnovich
17 testified, the debtors exceed the targets in ways that will
18 truly enhance the executives' recovery under this compensation
19 portion, they won't be the only ones happy. In fact, all of
20 the debtor's constituents looking to the continuation of this
21 company and its continued going concern value will be happy.
22 That would include not only those who are continuing to work
23 for the company, as well as those who've supplied it credit,
24 but also those who hope and expect that the company will
25 continue to honor its pension obligations and/or deal with

1 other aspects of buyout or termination packages. So, in short,
2 I will approve this motion. I don't believe that this was in
3 any way the type of compensation arrangement that Congress
4 dealt with under BAPCPA, but is, as I said before, very closely
5 tied to ordinary course compensation. So I did have a question
6 about the order, however. And I just want to make sure I don't
7 screw up negotiations that you had amongst yourselves with it.
8 So let me turn to that. As I understand it, yeah, and Mr.
9 Butler's been very clear about it this afternoon, the AIP
10 contemplates two adjustments and each of which is going to be
11 shared with the committee before it's implemented. The first
12 is an adjustment to a dollar for dollar reflect of a variance
13 between the assumptions in the business plan for labor unions
14 and/or General Motors savings. And the second is an adjustment
15 for division level performance targets based on allocation of
16 income and expense among divisions in the ordinary course of
17 business.

18 MR. BUTLER: Yes, Your Honor.

19 THE COURT: Okay. I have actually put that into the
20 order just to make it a little clearer. And what I'm going to
21 do is leave my markup with you and you can look it over with
22 Mr. Rosenberg and the others who want to look at it, which I
23 assume includes the unions' counsel, and you can let me know if
24 I got it wrong or not. But that's what I wanted to make clear.
25 And other than that, I didn't have any comments on the order.

1 MR. BUTLER: Thank you, Your Honor. We'll review
2 that and submit an order consistent with what you marked upon
3 or come back to chambers.

4 THE COURT: Okay. I do want to see one other thing.
5 I hope and I trust that there is a lot going on behind the
6 scenes with respect to labor and GM negotiations.

7 MR. BUTLER: There are a -- the --

8 THE COURT: You don't have to report to me.

9 MR. BUTLER: I'm not going to because I think in my
10 agreement with Mr. --

11 THE COURT: You're not supposed to.

12 MR. BUTLER: -- we would not report.

13 THE COURT: Right.

14 MR. BUTLER: Other than -- but I think your
15 assumption is correct.

16 THE COURT: Okay. Obviously you're going to come
17 back in April and give me a report, unless there's some further
18 development, but -- I was going to say this anyway, but the
19 comments of Mr. Peterson and others have prompted me to say it
20 even more. I strongly urge all the parties to put every effort
21 into those negotiations. And it's easy for me to do that
22 because I don't know whether anyone is not putting any effort
23 into it or not. And if you are then just pat yourself on the
24 back and finish. If you aren't, though, I'm going to reiterate
25 something I said at the hearing on the plan support agreement,

1 which is that because of a number of factors, which I don't
2 view necessarily as factors that will always pertain, this
3 debtor is in a position where the parties involved in those
4 negotiations, including GM, can achieve something if they act
5 promptly that they may well not be able to achieve later. It's
6 a confluence of -- as I said, a lot of factors including the
7 market, financial market, and what the debtor and all of its
8 workers have been able to achieve. And it seems to me that
9 because that is clear if someone isn't putting all of his or
10 her or its institutions efforts into resolving these open
11 issues, it's clear to me that they can be held accountable.
12 Not necessarily in this court. But, more importantly, to their
13 own investors and constituents. I would urge you to keep
14 working and, again, if you are, great. And pat yourselves on
15 the back and please come back to me and report a deal. Okay.

16 MR. BUTLER: Thank you, Your Honor. That completes
17 the matters on the March 2007 omnibus hearing.

18 (Whereupon this hearing was concluded at 2:18 PM)
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C E R T I F I C A T I O N

I, Sharona Shapiro, court approved transcriber, certify that
the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter.

Signature of Transcriber

March 27, 2007
Date

Sharona Shapiro
typed or printed name

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